

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

This Document Relates to:

**IN RE ELECTRONIC BOOKS ANTITRUST
LITIGATION**

**No. 11-md-02293 (DLC)
ECF Case
CLASS ACTION**

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

**PENGUIN GROUP (USA) INC., et al.,
Defendants**

**Civil Action
No.12-cv-03394**

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
12/9/2013

12/9/2013

PROPOSED FINAL JUDGMENT

This matter came for a duly-noticed hearing on December 6, 2013, upon Motion by Plaintiff States and Settlement Class ("Plaintiffs") for Final Approval of Settlements with Holtzbrink Publishers, LLC d/b/a Macmillan ("Macmillan") and with Penguin Group (USA) Inc., ("Penguin") in the above-captioned actions (collectively Plaintiffs, Macmillan and Penguin hereafter referred to as "Parties"). Plaintiffs' Motion was consented to by Macmillan and Penguin. Having reviewed the Motion and the Memorandum in Support filed therewith, any objections filed thereto, and upon all pleadings and proceedings had herein, this Court finds as follows:

Plaintiff States and Settlement Class filed separate complaints in this Court against E-book publishers Macmillan, Penguin, and others, alleging an unlawful agreement to inflate, fix, maintain or stabilize prices of E-books in violation of federal antitrust laws ("Complaints");

Plaintiff States seek damages and injunctive relief in their sovereign capacity and as *parens patriae* on behalf of Consumers residing in Plaintiff States who have purchased E-books from a Named Publisher;

Settlement Class seeks damages and injunctive relief on behalf of Consumers residing in Settlement Class States who have purchased E-books from a Named Publisher;

In order to resolve any and all disputes arising from the Complaints as to these defendants, Plaintiff States, Settlement Class and Macmillan executed a Settlement Agreement dated April 25, 2013, which is incorporated by reference herein, and Plaintiff States, Settlement Class and Penguin executed a Settlement Agreement dated May 20, 2013 which is incorporated by reference herein (collectively "Settlement Agreements" or "Settlements"); and

The Settlement Agreements do not constitute an admission of liability or of any issue of fact or law by Macmillan or Penguin;

In full and final settlement of the claims set forth in the Settlement Complaints, Macmillan and Penguin have paid compensatory damages, costs of notice and settlement administration, payments to Plaintiff States, service awards to Class Plaintiffs and attorneys' fees and costs to Class Counsel;

Neither Macmillan's nor Penguin's payments constitute nor will be treated as payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures;

The settling parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11; and

Pursuant to this Court's Preliminary Approval Order, notice of the Settlement Agreements was given and an opportunity to be heard was given to all persons requesting to be heard in accordance with this Court's orders. The Court has reviewed the terms of the Settlement Agreements, the submissions of the Parties in support of it, and the comments and objections received in response to the notice.

NOW, THEREFORE, without trial or adjudication of any issue of law or fact, before the taking of any testimony at trial, without the admission of liability or wrongdoing by Macmillan or Penguin and upon the consent of the Parties hereto, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. DEFINITIONS

All capitalized terms in this Final Judgment shall have the same meaning as defined in the Settlement Agreements.

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over Macmillan and Penguin. The Complaints state a claim upon which relief may be granted against Macmillan and Penguin pursuant to 15 U.S.C. §§15, 15c and 26. Jurisdiction lies in this Court pursuant to 28 U.S.C. § 15 and 28 U.S.C. § 1332(d).

III. APPLICABILITY

A. This Final Judgment shall apply to Plaintiff States, Settlement Class, Macmillan, Penguin and Consumers who did not file with the Court valid and timely requests for exclusion from the Settlement Agreements. The Court finds that the persons listed on Attachment 1 to this Final Judgment submitted valid and timely exclusion requests.

B. Except with respect to Macmillan and Penguin ("Releasees"), this Final Judgment does not constitute a release or otherwise affect any rights Plaintiff States, Settlement Class and Consumers have or may have against any other entity whatsoever, including Apple Inc., or its parents, affiliated entities, officers, directors, employees or attorneys.

IV. SETTLEMENT AGREEMENT APPROVAL

The Court has determined that the Settlement Agreements are, in all respects, fair, reasonable, and adequate and in the best interests of Consumers, and that notice thereof comports in all respects with 15 U.S.C. §§ 15 and 15c, Fed. R. Civ. Proc. 23 and due process. This Court further finds the Settlements set forth in the Settlement Agreements are the result of arm's-length negotiations between experienced counsel representing the interests of Consumers and the defendants. Accordingly, the Settlements embodied in the Settlement Agreements are hereby approved in all respects and shall be consummated in accordance with their terms and provisions. Any and all objections thereto are overruled.

V. CLASS CERTIFICATION

A. The Court finally certifies the following Class, for purposes of settlement only: [A]ll natural persons who have purchased E-books published by the Named Publishers during the period from April 1, 2010 until May 21, 2012, who resided in one of the following states, territories or commonwealths at the time of their E-book purchase: American Samoa, California, Florida, Georgia, Guam, Hawaii, Kentucky, Maine, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Northern Mariana Islands, Oklahoma, Oregon, Rhode Island, South Carolina, U.S. Virgin Islands, Washington, or Wyoming.

B. This certification is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of Macmillan or Penguin that this Action, or any other

proposed or certified class action, is appropriate for any other purpose, including, without limitation, for trial class treatment.

C. The Court appoints the following as the named plaintiffs for this Settlement Class: Anthony Petru, Marcus Mathis, Christian Gilstrap, Cynthia J. Tyler, Thomas Friedman, Jeremy Sheppeck, Aloysius J. Brown, III, Anne M. Rinaldi, Laura J. Warner, Barbara Heath, Kathleen Linda Pitlock, Kathleen Weiss, Matthew A. Hosking, Diane Urbanec, Ed Macauley, Ronna Hamelin, James L. Nesmith, Lauren Albert, Sue Roberts, Shane S. Davis, Sue Ellen Gordon, Charles Leonard Pelton, Sr., Kimberly Whiteside Brooks, Steven D. Campbell, and Jessica Moyer.

D. The Court designates Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC as Class Counsel for the Settlement Class.

E. This Court finds and concludes that the applicable requirements of Federal Rule of Civil Procedure 23 have been satisfied with respect to the Settlement Class and Settlements, and specifically, that: (a) the number of members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) named plaintiffs' claims are typical of the claims of the Settlement Class they seek to represent; (d) named plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class and will continue to do so; and (e) common questions of law and fact predominate over individual questions with respect to the Settlement Class and Settlements.

F. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court hereby approves the Settlements set forth in the Settlement Agreements and finds that said Settlements

are, in all respects, fair, reasonable and adequate to, and are in the best interests of, the named plaintiffs, the Settlement Class and each of the Settlement Class Members.

VI. CONSUMER DISTRIBUTION PLAN

A. The Consumer Distribution Plan ("Distribution Plan"), set forth as Exhibit K in Plaintiffs' Memorandum in Support of Motion for Final Approval, is fair, reasonable and adequate and is hereby approved. Plaintiffs are directed to cause the Consumer Compensation funds to be distributed in accordance with said Distribution Plan as soon as practicable after this Final Judgment becomes final.

If any appeal is filed in this matter, there shall be no delay in the
B. ~~If, as a result of an appeal in this matter, distribution of any or all of the Consumer Compensation funds is delayed, the appellant(s) are hereby ordered to pay all costs related to the preparation and distribution of supplemental notice explaining why full distribution has been delayed. Such notice will be sent to all impacted, eligible consumers.~~
as any other funds paid in settlement.

VII. INJUNCTION

The Court approves the injunctive relief as set forth in the Order and Stipulated Injunctions which are Attachment A to both Settlement Agreements, and incorporated herein by reference.

VIII. STATE PAYMENTS

The Court hereby approves the distribution to Plaintiff States of the State Compensation funds provided by Macmillan and Penguin pursuant to Section IV.B of the Settlement Agreements. Plaintiff States may allocate and distribute these funds at their discretion as set out

in Section VI.B of the Settlement Agreements any time after this Final Judgment becomes final, and without further order of this Court.¹

IX. CLASS PLAINTIFFS' PAYMENTS

The Court hereby approves service awards as outlined below to the named plaintiffs for the Settlement Class, and finds that such awards are fair and reasonable:

Class Representative Name (State)	Award Requested
Albert, Lauren (NY)	\$2000.00
Brooks, Kimberly (TN)	\$396.75
Brown, Aloysius J. (IL)	\$2000.00
Campbell, Steven (UT)	\$1447.72
Davis, Shane (OR)	\$1400.00
Friedman, Thomas (FL)	\$754.25
Gilstrap, Christian (AZ)	\$2000.00
Gordon, Sue Ellen (SC)	\$792.00
Hamelin, Ronna (NH)	\$428.00
Hosking, Matthew (MT)	\$1064.25
Mathis, Marcus (MS)	\$1744.96
Moyer, Jessica (WI)	\$1080.00
Nesmith, James (NM)	\$2000.00
Pelton Sr., Charles (SD)	\$2000.00
Petru, Anthony (CA)	\$2000.00

¹ With respect to the State of Colorado, its apportionment shall be used first for reimbursement of Colorado's actual costs and attorneys' fees, second, to be held, along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement efforts.

Class Representative Name (State)	Award Requested
Rinaldi, Anne (IA)	\$338.00
Roberts, Sue (NC)	\$1238.75
Tyler, Cynthia (CA)	\$1201.28
Urbanec, Diane (NE)	\$2000.00
Warner, Laura (KS)	\$800.00

dlc

XI. NO ADMISSION OF LIABILITY

Neither this Final Judgment nor the Settlement Agreements shall be used or construed by any person as an admission of liability by Macmillan or Penguin to any party or person, or be deemed evidence of any violation of any statute or law or admission of any liability or wrongdoing by Macmillan or Penguin or of the truth of any of the claims or allegations contained in the Complaints. Neither this Final Judgment nor the Settlement Agreements shall be offered in evidence or used for any other purpose in this or any other matter or proceeding other than as may be necessary to consummate or enforce the Settlement Agreements or the terms of this Final Judgment or by Macmillan or Penguin in connection with any action asserting Released Claims.

XII. DISMISSAL OF ACTIONS AND RELEASE

Upon the Effective Date, and subject to the provisions of Section XIII of this Final Judgment, Plaintiff States' and Settlement Class's Complaints are dismissed as against Macmillan and Penguin with prejudice. Plaintiffs and Consumers who did not file with the Court valid and timely requests for exclusion from the Settlement Agreements are barred from

further prosecution of the Released Claims, and Releasees are released and forever discharged from liability for the Released Claims.

XIII. FINALITY OF JUDGMENT

The Court finds that this Final Judgment adjudicates all the claims, rights and liabilities of the Parties, and is final and shall be immediately appealable.

XIV. RETENTION OF JURISDICTION

Without affecting the finality of this Final Judgment, the Court retains jurisdiction for the purpose of enforcing the terms of the Settlement Agreements and enabling any party hereto to apply for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, the modification of any of the provisions hereto to the extent such modification is permitted, and to remedy of a violation of any of the provisions contained herein. This Court shall have the authority to specifically enforce the provisions of this Final Judgment.

SO ORDERED:

Dated: New York, New York

Denise Cote, 2013.

Denise Cote
Hon. DENISE COTE
United States District Judge

RE ELECTRONIC BOOKS ANTITRUST LITIGATION, Case No. 11-md-02293
and
Texas, et al. v. Penguin Group, et al, Case No. 12-cv-03394

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF MACMILLAN AND PENGUIN SETTLEMENT AGREEMENTS
AND DISTRIBUTION PLAN**

Attachment A
To Proposed Final Judgment

**LIST OF PEOPLE WHO REQUESTED TO BE
EXCLUDED FROM THE SETTLEMENTS**

Requests For Exclusion

	<u>Claimant Name</u>	<u>Postmark Date</u>	<u>Category</u>
1	JOHN W URSU	9/9/2013	Minnesota Only
2	JASON HOLMERS	8/30/2013	Minnesota and Non-Minnesota
3	CHERYL STEPHENSON	10/14/2013	Minnesota and Non-Minnesota
4	LARRY HITE	8/31/2013	Non-Minnesota
5	JULIA OSBORNE	9/2/2013	Non-Minnesota
6	JOHN DOWNING	9/3/2013	Non-Minnesota
7	NATHAN MCDANIEL	9/3/2013	Non-Minnesota
8	RODOLFO SORONDO JR	9/3/2013	Non-Minnesota
9	RUSTY ROSS	9/3/2013	Non-Minnesota
10	BRENNA E GUARNEROS	9/4/2013	Non-Minnesota
11	DONNA R FRY	9/4/2013	Non-Minnesota
12	GWENDOLYN SIMOS	9/4/2013	Non-Minnesota
13	KIMBERLY WILLIAMS	9/4/2013	Non-Minnesota
14	RYAN HAINLEN	9/4/2013	Non-Minnesota
15	JOEL THOMASON	9/5/2013	Non-Minnesota
16	WILLIAM R HURDLOW	9/5/2013	Non-Minnesota
17	ADAM SPEEGLE	9/6/2013	Non-Minnesota
18	LAURA COLLINS	9/6/2013	Non-Minnesota
19	STEPHANIE FLEMING	9/6/2013	Non-Minnesota
20	KRISTINE ENDERLE	9/7/2013	Non-Minnesota
21	ARI ARMSTRONG	9/9/2013	Non-Minnesota
22	GENE LAVERGNE	9/9/2013	Non-Minnesota
23	HARRY GOAR	9/9/2013	Non-Minnesota
24	JILL STEINER	9/9/2013	Non-Minnesota
25	GEORGE PAUL SKENTZOS	9/10/2013	Non-Minnesota
26	PATRICK BLACK	9/10/2013	Non-Minnesota
27	SHELLY MARTIN	9/10/2013	Non-Minnesota
28	JANE KRIER	9/11/2013	Non-Minnesota
29	BRIAN ANTEZANA	9/12/2013	Non-Minnesota
30	JIM ALLARD	9/12/2013	Non-Minnesota
31	PAULA SUE TISCHLER	9/13/2013	Non-Minnesota
32	CAITLIN DEPTULA	9/13/2013	Non-Minnesota
33	JONATHAN TOWNLEY	9/14/2013	Non-Minnesota
34	LYNN VIRNOCHE	9/16/2013	Non-Minnesota
35	CARL GALLOZZI	9/17/2013	Non-Minnesota
36	DAVID GOODENOUGH	9/17/2013	Non-Minnesota
37	DUSTIN SHAFFER	9/17/2013	Non-Minnesota
38	WILLIAM HETZEL	9/17/2013	Non-Minnesota
39	KARI DELL	9/18/2013	Non-Minnesota

	<u>Claimant Name</u>	<u>Postmark Date</u>	<u>Category</u>
40	TRAVIS R HORESH	9/23/2013	Non-Minnesota
41	GLENN FRIEDMAN	9/25/2013	Non-Minnesota
42	MARJORIE ROSENBERG	9/30/2013	Non-Minnesota
43	ROSS NEVIN ENGLAND	9/30/2013	Non-Minnesota
44	STEPHEN L VENUTO	10/1/2013	Non-Minnesota
45	CARRIE HIGO	10/2/2013	Non-Minnesota
46	ALAN C PENDLETON	10/3/2013	Non-Minnesota
47	KENNETH A MORRISON	10/7/2013	Non-Minnesota
48	TRISHA HERPEL	10/10/2013	Non-Minnesota
49	WADE TREGASKIS	10/10/2013	Non-Minnesota
50	SHARON RICH	10/14/2013	Non-Minnesota
51	ERIN FRIIS	10/15/2013	Non-Minnesota
52	JOHN D LAUGHREY	10/15/2013	Non-Minnesota
53	JUDITH DARBO	10/15/2013	Non-Minnesota
54	LISA M SKILES	10/15/2013	Non-Minnesota
55	MELVIN MCGUIRE	10/15/2013	Non-Minnesota
56	SUZANNE MICKIEWICZ	10/15/2013	Non-Minnesota
57	SUZANNE SIVEK	10/15/2013	Non-Minnesota
58	DAVID BARNES	10/16/2013	Non-Minnesota
59	JAMES MIODWSKI	10/16/2013	Non-Minnesota
60	KIMBERLY LIGHTSEY	10/16/2013	Non-Minnesota
61	MRS FRITZ FREESE	10/16/2013	Non-Minnesota
62	TAMARA HOWARD	10/16/2013	Non-Minnesota
63	DIANE HYSLER	10/17/2013	Non-Minnesota
64	JAMIE LYN LATIMER	10/18/2013	Non-Minnesota
65	KAREN SURE BIEBER	10/18/2013	Non-Minnesota
66	LORA CARLSON	10/18/2013	Non-Minnesota
67	ELLEN GREENE	10/21/2013	Non-Minnesota
68	ERIK BALKAN	10/21/2013	Non-Minnesota
69	JOSHUA D BLONKSI	10/21/2013	Non-Minnesota
70	SO RA LEE	10/21/2013	Non-Minnesota
71	KIMBERLY MASON	10/24/2013	Non-Minnesota
72	LYDYA B MCCAFFERTY	11/5/2013	Non-Minnesota